IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. WILLIAMS,	§	
	§	No. 505, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
V.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9803018202B
Appellee.	§	

Submitted: November 25, 2008 Decided: February 2, 2009

Before HOLLAND, BERGER and JACOBS, Justices.

ORDER

This 2nd day of February 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, David M. Williams, filed this appeal from the Superior Court's September 19, 2008 denial of his sixth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Williams' opening brief that the appeal is without merit.¹ We agree and affirm.

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¹ Del. Supr. Ct. R. 25(a).

- (2) Williams was indicted four times in 1998. Prosecutors obtained a superseding indictment that consolidated the four indictments under one number, 9803018202. Thereafter, four of the charges in the superceding indictment were severed and redesignated as 9803018202B. The remaining counts in the superceding indictment were designated as 9803018202A.
- (3) On August 24, 1999, Williams was tried by a jury and was convicted of the four charges in 9803018202B, which included two counts of second degree attempted burglary. On September 2, 1999, the State filed a motion to have Williams sentenced as a habitual offender for the two counts of second degree attempted burglary.
- (4) On October 7, 1999, Williams pled guilty to two of the charges in 9803018202A. Williams also pled guilty to a charge in a new indictment.
- (5) On October 8, 1999, Williams was declared to be a habitual offender and was sentenced, in all of his cases, *i.e.*, in 9803018202A, 9803018202B and new indictment 9903025091, to a total of twenty-seven years at Level V suspended after twenty-six years for one year at Level IV followed by probation. On direct appeal, Williams' convictions were affirmed.²

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² Williams v. State, 2000 WL 975057 (Del. Supr.).

- (6) On September 2, 2008, Williams filed his sixth motion for postconviction relief. Williams contended that his 1999 sentence was imposed illegally because the habitual offender motion was untimely filed, and because the motion referenced incorrect charge numbers for the two counts of second degree attempted burglary.³
- (7) By order dated September 19, 2008, the Superior Court, noting that it could "discern no comprehensible grounds for relief," denied Williams' postconviction motion as procedurally barred pursuant to various subsections of Rule 61(i).⁴ We affirm the Superior Court's denial of relief, concluding alternatively that Williams' claims also are untimely under Superior Court Criminal Rule 35.⁵
- (8) It is manifest on the face of Williams' opening brief that the appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

³ It appears that the State's motion referenced charge numbers that were used in one of the indictments that was consolidated under 9803018202.

⁴ State v. Williams, 2008 WL 4329412 (Del. Super.).

⁵ See Del. Super. Ct. Crim. R. 35(a), (b) (providing in pertinent part that a motion for correction of a sentence imposed in an illegal manner must be filed within ninety days of sentencing). See also Unitrin, Inc. v. American General Corp., 651 A.2d 1361, 1390 (Del. 1995) (providing that "this Court may affirm on the basis of a different rationale than that which was articulated by the trial court.").

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger Justice